

LEGISLATIVE RESEARCH COMMISSION

TAXATION AND REGULATION OF BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND CREDIT UNIONS



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REPORT TO THE
1983 GENERAL ASSEMBLY
OF NORTH CAROLINA
1984 SESSION

LEGISLATIVE RESEARCH COMMISSION

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June 7, 1984

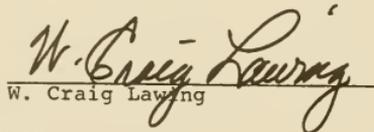
TO THE MEMBERS OF THE 1983 GENERAL ASSEMBLY (1984 Session):

The Legislative Research Commission herewith reports to the 1983 General Assembly (1984 Session) on the matter of the taxation and regulation of banks, savings and loan associations and credit unions. The report is made pursuant to Chapter 905 of the 1983 General Assembly (1983 Sessions).

This report was prepared by the Legislative Research Commission's committee on the Taxation and Regulation of Banks, Savings and Loan Associations and Credit Unions and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,


Liston B. Ramsey


W. Craig Lawing

Cochairmen
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION

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PREFACE

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" [G.S. 120-30.17(1)].

At the direction of the 1983 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The co-chairmen of the Legislative Research Commission, under the authority of General Statute 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairmen, one from each house of the General Assembly, were designated for each committee.

The study of the taxation and regulation of banks, savings and loan associations and credit unions was authorized by Section

1(28) of Chapter 905 of the 1983 Session Laws (1983 Sessions). That act states that the Commission may consider Senate Joint Resolution 381 in determining the nature, scope and aspects of the study. Section 1 of Senate Joint Resolution 381 reads: "The General Assembly hereby directs the Legislative Research Commission to conduct a study of the present regulations and tax levies applicable to commercial banks, savings and loan associations and credit unions."

The Legislative Research Commission grouped this study in its Finance area under the direction of Senator William W. Staton. The Committee was chaired by Representative Ed N. Warren and Senator James H. Edwards. The full membership of the Committee is listed in Appendix A of this report. Relevant portions of Chapter 905 and Senate Joint Resolution 381 are included as Appendix B.

COMMITTEE PROCEEDINGS

The Committee on the Taxation and Regulation of Banks, Savings and Loan Associations and Credit Unions (hereafter "Committee") has held two meetings thus far. All federally- and state-chartered banks, federally- and state-chartered savings and loan associations, state-chartered credit unions, concerned state regulators, the chairman of the Securities and Exchange Commission, and national representatives of the securities industry, among others, were notified of the Committee's meetings. Many of the above groups sent representatives to attend the meetings. Lists of those mailed notices and those attending Committee meetings, as well as the minutes and material presented by witnesses before the Committee are contained in the Committee's records on file in the Legislative Library.

At its first meeting, the Committee invited and heard from representatives of state regulatory agencies and the financial industry on the areas they felt the Committee should and should not address in its study. The following individuals appeared: The Honorable Harlan E. Boyles, State Treasurer; Mr. Mark Lynch, Secretary of Revenue; Mr. C. C. Hope, Secretary of Commerce; Mr. James Currie, Commissioner of Banks; Mr. Roy D. High, Administrator of the Credit Union Division of the Department of Commerce; Mr. George King, Administrator of the Savings and Loan Division of the Department of Commerce; Mr. Ruffin Bailey, North Carolina Credit Union League; Mr. John B. Jordan, Jr., North Carolina Bankers' Association; and Mr. Paul H. Stock, North

Carolina League of Savings Institutions. The Committee instructed its staff to obtain additional information on specified topics for its subsequent meetings.

At its second meeting the Committee heard from the following individuals: Mr. Donald R. Beason, President and Chief Executive Officer of the Financial Institution Assurance Corporation (FIAC), on internal and external safeguards to protect depositors in institutions insured by FIAC; Mr. B. E. Dail, Director of the Tax Research Division of the Department of Revenue, on comparisons of state taxation of financial institutions in all states and statistics on changes to the North Carolina intangibles tax; Ms. Sabra Faires, Committee Counsel to the Legislative Research Commission's Committee on Revenue Laws, on proposals of that Committee to modify the intangibles tax; and Mr. Daniel Bell, III, Deputy Securities Administrator of the Department of State, on state and federal regulation of the securities industry with particular emphasis on money market funds and the Cash Management Account type of security devices.

Banking

Mr. John R. Jordan, Jr., Legislative Counsel to the North Carolina Bankers' Association, presented a draft of a bill and analysis to permit interstate regional banking in this state on a reciprocal basis. Mr. Jordan stated that the Governor supports this proposal and wants it enacted this year. He summarized highlights of the bill by pointing out that (1) it is a regional bill confined to 13 Southeastern states with similar economies

and the District of Columbia, (2) the Commissioner of Banks of North Carolina has approval authority and is the regulator under it, (3) the bill applies to bank holding companies and (4) a "mirror image" test requiring reciprocity applies., Savings and Loan Associations are not affected by this bill. Mr. Jordan informed the Committee that 17 states have similar legislation. Mr. Jordan said that the proposed bill is enabling legislation allowing North Carolina bank holding companies to acquire banks in another state in the Southeastern region or for bank holding companies in another state in the Southeastern region to acquire banks in North Carolina. Mr. Jordan was asked if there was any active opposition to this bill from any of the banks. He was not aware of any active opposition, but stated that some banks have not taken any position. The Committee directed its staff to poll all banks in this State as to each's position on the legislation to permit interstate regional reciprocal banking..

The Committee directed its co-chairmen to appoint a subcommittee to investigate Mr. Jordan's proposed bill and report back at the Committee's next meeting. The Subcommittee consisted of Senator Edwards and Representative Warren, cochairmen; Senators Hardison and Royall; and Representatives Evans and Murphy.

The Subcommittee met twice. Mr. James S. Currie, the Commissioner of Banks, upon request of the co-chairmen of the Subcommittee, presented to the Subcommittee a history of bank holding company legislation in this country (see Appendix D), and a draft of a bill dealing with bank holding company regulation. After a review of the proposed bank holding company legislation,

the Subcommittee decided to include portions of it in the Interstate Banking Bill and suggested that no further action be considered in the Short Session of the General Assembly concerning bank holding company legislation.

The latest edition considered by the Subcommittee and a brief analysis of it are contained as Appendices E and F, respectively. Mr. John R. Jordan, Mr. Paul Polking of NCNB, Mr. Marion Cowell of First Union National Bank, and Mr. Ralph Strayhorn of Wachovia Bank Corporation all informed the Subcommittee that they saw no need for bank holding company legislation in North Carolina.

Mr. Paul Polking of NCNB went through a section-by-section analysis of the interstate regional reciprocal banking proposal. Much discussion followed. Mr. Currie indicated that he would not take a position on either the interstate regional reciprocal banking proposal or on the banking holding company proposal.

The Committee's staff distributed a memorandum on the results of the survey of the position that banks operating in this State take with regard to interstate regional reciprocal banking. Of the 71 banks operating in North Carolina, 34 (or 47.9%) banks had responded. Of those responding 23 (or 67.6%) were in favor of the legislation, 10 (or 29.4 %) were opposed to the legislation and 1 (2.9%) took no position. An updated copy of that memorandum is attached as Appendix G.

Interstate Acquisitions by Thrift Institutions

In general, the forces in our nation's economic system which have persuaded the Committee to recommend legislation authorizing regional reciprocal interstate activities for commercial banks are equally applicable to thrift institutions. It is therefore reasonable to conclude that similar legislation should be enacted for thrifts. One significant variable, however, could not be assessed during the limited time available for the Committee's deliberations, so this report does not contain legislation relating to interstate activities of thrift institutions.

The legislation proposed for commercial banks has an effective date of January 1, 1985. Most economists predict interest rate levels by that time to have risen significantly, though specific forecasts vary. Because the greatest proportion of the assets of North Carolina's savings institutions is comprised of long term fixed rate mortgages, the thrift industry, as a whole, is much more sensitive to interest rate swings than are commercial banks. Next year's higher interest rates could have such a negative impact on the earnings of the thrift industry as to make its institutions vulnerable to hostile takeovers but unable to enjoy the benefits of the new law through acquisitions in other states. If such a scenario were to develop, little good would have been accomplished for the citizens of this state by authorizing regional reciprocal interstate activities for thrifts.

Representatives of the thrift industry attempted to assess the need for such legislation during the Committee's period of

deliberations, but were unable to reach a consensus by the date required by law for formulation of the Committee's recommendations. The Committee concluded that it would be premature to recommend legislation for thrifts without such a consensus. If, however, by the time the Legislature convenes in June, 1984, analysis by the thrift industry produces a consensus that authorization of regional reciprocal interstate activities by thrift institutions is not rendered inadvisable by current economic projections for interest rates, legislative action would be appropriate at that time. To preserve competitive equity among financial institutions, such authorization should be on the same terms and conditions as that enacted regarding commercial banks.

Late Fees on Consumer Loans

Mr. Gordon Allen, representing the North Carolina League of Savings Institutions, appeared before the Committee concerning the need for lenders to be able to charge late fees on consumer loans. Savings and loan associations have begun to make consumer loans only recently and during the time of the Committee's deliberations discovered that many officials interpret Chapter 24 as prohibiting late charges on these loans. The Consumer Finance Act, in G.S. 53-175, authorizes small loan companies to make a one-time, five percent (5%) charge for a late payment. Mr. Allen proposed authorization of a similar fee for consumer loans under Chapter 24. In reviewing this matter, the Committee noted that several portions of G.S. 24-10 appeared to be inconsistent.

FINDINGS

The Committee on the Taxation and Regulation of Banks, Savings and Loan Associations and Credit Unions finds that:

Banking

1. Banking organizations play a vital role in the development and growth of a viable local and regional economy;

2. Banking services in North Carolina will be improved and competition enhanced by the development in the southeastern region of the United States of bank holding companies that are sufficient in size to compete effectively with the largest banking organizations in the United States in all areas of banking;

3. Economic growth in North Carolina will be stimulated and aided by the development of such bank holding companies in the Southeastern region of the United States;

4. It is desirable, at the same time, to place certain limitations on the development of bank holding companies serving North Carolina in order to prevent undue concentrations of economic resources and a lessening of competition as a result thereof;

5. A number of the United States, including States located in the Southeastern region of the United States and contiguous to North Carolina, have already authorized some form of interstate banking;

6. It is desirable to encourage other States located in the Southeastern region of the United States to permit the acquisition of their banks and bank holding companies by bank holding companies principally located in North Carolina in order to further the development of bank holding companies in the Southeastern region of the United States; and

7. Federal law permits each of the United States to determine the extent to which bank holding companies may engage in interstate banking within its borders.

Interstate Acquisitions of Thrift Institutions

8. It is appropriate to enact legislation authorizing regional reciprocal interstate activities for thrift institutions on the same basis as that recommended for commercial banks, and effective at the same time, if the thrift industry reaches a consensus that economic conditions at that time will permit the industry to utilize the authority granted.

Late Fees on Consumer Loans

9. It is appropriate for all lenders to have equal authority to charge late fees on consumer loans.

RECOMMENDATIONS

The Committee on the Taxation and Regulation of Banks, Savings and Loan Associations and Credit Unions recommends that the 1984 Regular Session of the 1983 General Assembly enact legislation:

Banking

1. To permit acquisition, on a reciprocal basis, of North Carolina banks and bank holding companies by bank holding companies principally located in other states in the Southeastern region of the United States, subject to the supervision and regulation of the North Carolina Commissioner of Banks. The recommended legislation and a section-by-section analysis of the legislation are contained in Appendices B and I respectively.

Interstate Acquisitions of Thrift Institutions

2. To authorize regional reciprocal interstate activities for thrift institutions on the same basis as that recommended for commercial banks, and effective at the same time, if, and only if, the thrift industry reaches a consensus that economic conditions at that time will permit the industry to utilize the authority granted.

Late Fees on Consumer Loans

3. Amending G.S. 24-10 to authorize assessment if late charges not exceeding five percent (5%) on consumer loans as provided in the legislative proposal contained in this report; and to review the provisions of G.S. 24-10 generally. (The recommended legislation is attached as Appendix J of this Report.)

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H. B. 1142 CHAPTER 905

AN ACT AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION AND BY THE COMMISSION ON CHILDREN WITH SPECIAL NEEDS AND MAKING TECHNICAL AMENDMENTS RELATING THERETO.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1983 bill or resolution that originally proposed the study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

• • •

(28) Regulation and Taxation of Banks, Savings and Loans and Credit Unions (S.J.R. 381 - Edwards of Caldwell),

• • • •

Sec. 6. For each of the topics the Legislative Research Commission decides to study, the Commission may report its findings, together with any recommended legislation, to the 1984 Session of the General Assembly or to the 1985 General Assembly, or the Commission may make an interim report to the 1984 Session and a final report to the 1985 General Assembly.

• • •

Sec. 13. Bills and Resolution References. The listing of the original bill or resolution in this act is for references purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 14. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 21st day of July, 1983.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1983

SENATE JOINT RESOLUTION 381

Sponsors: Senator Edwards of Caldwell.

Referred to: Rules and Operation of the Senate.

April 18, 1983

1 A JOINT RESOLUTION DIRECTING THE LEGISLATIVE RESEARCH COMMISSION
2 TO STUDY PRESENT SYSTEM OF REGULATION AND TAXATION OF BANKS,
3 SAVINGS AND LOANS AND CREDIT UNIONS.

4 Whereas, the members of the North Carolina General
5 Assembly are keenly aware of changes currently taking place with
6 regard to the operational and organizational strategies of the
7 various financial institutions in North Carolina; and

8 Whereas, the laws enacted which deal with regulation and
9 taxation are not uniformly applicable to commercial banks,
10 savings and loan associations and credit unions, as dramatically
11 illustrated as follows:

12 STATE AND LOCAL TAXES LEVIED ON BANKS,

13 SAVINGS AND LOAN ASSOCIATIONS,

14 AND CREDIT UNIONS

<u>Banks</u>	<u>Savings</u>	<u>Credit</u>
	<u>& Loans</u>	<u>Unions</u>

17 I. Franchise Tax

18 General business franchise

19 G.S. 105-122	Taxable	Taxable	Exempt
20 (\$1.50 per \$1,000 tax base)			

1	II. <u>Corporate Income Tax</u>			
2	G.S. 105-130	Taxable	Taxable	Exempt
3	6% of State taxable income			
4	III. <u>Intangibles Tax (Paid by</u>			
5	<u>the institutions)</u>			
6	Money on Deposit			
7	G.S. 105-199	Exempt	Taxable	Exempt
8	(10¢ per \$100.00)			
9	Money on Hand			
10	G.S. 105-200	Taxable	Taxable	Exempt
11	(25¢ per \$100.00)			
12	Accounts Receivable			
13	G.S. 105-201	Taxable	Exempt	Exempt
14	(25¢ per \$100.00)			
15	Notes Receivable, etc.			
16	G.S. 105-202	Taxable	Exempt	Exempt
17	(25¢ per \$100.00)			
18	Shares of Stock			
19	G.S. 105-203	Taxable	Exempt	Exempt
20	IV. <u>Intangibles Tax (Paid</u>			
21	<u>by depositors)</u>			
22	Money on Deposit			
23	(10¢ per \$100.00)	Taxable	Exempt	Exempt
24	V. <u>License Tax</u>			
25	Annual privilege tax			
26	G.S. 105-102.3	Taxable	Exempt	Exempt
27	(\$30.00 per \$1,000,000			
28	of average total assets)			

1 VI. Sales and Use Tax Taxable Taxable Taxable

2 VII. Ad Valorem Tax Taxable Taxable Taxable

3 Whereas, the General Assembly has created and provided
4 for separate and autonomous regulatory bodies in the Banking
5 Commission, the Savings and Loan Commission and the Credit Union
6 Commission, all with separate and express jurisdictional
7 responsibilities none of which have an overall authority to
8 develop a State policy for regulation and taxation;

9 Whereas, the public interest dictates the need for a
10 legislative review of the entire industry, with emphasis upon
11 regulation and taxation; Now, therefore,
12 Be it resolved by the Senate, the House of Representatives
13 concurring:

14 Section 1. The General Assembly hereby directs the
15 Legislative Research Commission to conduct a study of the present
16 regulations and tax levies applicable to commercial banks,
17 savings and loan associations and credit unions.

18 Sec. 2. The Legislative Research Commission shall
19 report its findings, together with any recommended legislation,
20 to the 1984 Session of the General Assembly or the Commission may
21 make an interim report to the 1984 Session and a final report to
22 the 1985 General Assembly.

23 Sec. 3. This resolution is effective upon ratification.

24
25
26
27
28

STATEMENT OF THE COMMISSIONER OF BANKS REGARDING
BANK HOLDING COMPANY LEGISLATION

A bank holding company is quite simply a corporation which owns one or more banks. Bank holding companies are organized under state law, unlike banks which may be either organized under state or Federal law.

In North Carolina, there are 18 bank holding companies, all of which are North Carolina chartered corporations. These bank holding companies own bank subsidiaries which control 92.78% of the total commercial bank deposits and 93.86% of the total commercial bank assets in this state as of December 31, 1983. Seven of these North Carolina bank holding companies own seven National bank subsidiaries located in North Carolina, and eleven bank holding companies own 12 State chartered banks. NCNB Corporation of Charlotte owns a Florida bank holding company which owns a National bank in Florida; and Carolina Bancorp, Inc. of Sanford owns two state-chartered banks in North Carolina.

Although these bank holding companies are chartered under the general corporations law of North Carolina, this State has never enacted any legislation providing for the supervision and regulation of bank holding companies.

The US Congress adopted the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.] which confers regulatory authority over bank holding companies on the Board of Governors of the Federal Reserve System (FRS). Basically, this act requires approval by the FRS before a company may acquire a bank. The act also empowers the FRS to approve acquisitions by bank holding companies of non-bank subsidiaries engaged in activities which are closely related to and a proper incident to banking. Section 3(d) [12 U.S.C. 1842(d)] of the Federal Act prohibits a bank holding company from acquiring a bank outside the bank holding company's home state unless such acquisition is specifically allowed by statute law of the state where the target bank is located. North Carolina has never adopted legislation allowing out-of-state bank holding companies to acquire banks located in North Carolina.

Bank holding companies, however, are not prohibited by the Federal Act from acquiring nonbank subsidiaries outside their home states. According to a 1983 survey by the Federal Reserve Bank of Atlanta, bank holding companies

located outside of North Carolina were engaged in activities at 769 locations in North Carolina through non-bank subsidiaries. Activities include: financial companies, factoring, servicing loans, leasing, insurance agency, underwriting credit life insurance and mortgage banking. The 769 locations in North Carolina by out-of-state bank holding companies through nonbank subsidiaries was the third highest concentration in the Nation. California led the way with 907 and Florida was second with 824. Pennsylvania with 649 was behind North Carolina in fourth place.

In the Federal Act, the Congress displayed a strong policy in favor of state control over banking structure. In addition to the provisions of Section 3(d) [the so-called Douglas Amendment] discussed above prohibiting interstate acquisitions of banks by bank holding companies, Section 7 [12 U.S.C. 1846] of the Federal Act provides:

"RESERVATION OF RIGHTS TO STATES"

"Sec. 7. The enactment by the Congress of the Bank Holding Company Act of 1956 shall not be construed as preventing any state from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof."

As matters now stand under the present state of the law, the State of North Carolina has no supervisory role in any of the following bank holding company transactions:

1. Acquisition of a bank by a bank holding company in North Carolina.
2. Acquisition of a non-bank subsidiary by a bank holding company in North Carolina.
3. Acquisition of a non-bank subsidiary in North Carolina by a bank holding company located outside of North Carolina.
4. Mergers of bank holding companies.
5. Change of Control of bank holding companies.

The regulatory deficiencies were brought into sharp focus in the recent application of Citicorp to charter an industrial bank in Charlotte. The matter is currently on appeal to the North Carolina Court of Appeals; and even if the courts finally uphold the Commission in denying this application, the ability of bank holding companies to acquire industrial banks in North Carolina will not be curtailed and further applications can and probably will be filed.

A closely related problem involves ownership of "non-bank banks" by corporations which are not bank holding companies. As matters now stand, a corporation can own a bank which either does not take demand deposits or does not make commercial loans and escape the provisions of the Federal Act. The North Carolina laws being silent, a commercial or industrial company, e.g., could acquire such a bank in North Carolina.

The Commissioner has received a considerable number of inquiries from finance companies desiring to charter industrial banks, and from corporations desiring to charter or acquire "non-bank banks". These transactions are not prohibited under the present law and may be feasible without any special guidelines.

The North Carolina developments are part of the National trend in the banking area. Bank holding companies are expanding and companies which have not been in the banking business before are acquiring "non-bank banks." Congress is considering legislation in this area to close the "non-bank bank" loophole and also to expand the powers of bank holding companies in the securities and insurance fields. If North Carolina fails to act in this area, regulation of bank holding companies, including determination of the evolution of their structure, will be deferred solely to federal authorities.

Many states have already adopted comprehensive bank holding company legislation. West Virginia and Georgia are recognized as having the strongest bank holding company statutes. New Jersey is preparing for introduction in the near future extremely strong and comprehensive legislation. According to the Conference of State Bank Supervisors, nineteen states have examination authority over the parent bank holding company; fourteen states have examination authority over non-bank subsidiaries; twenty states have approval authority over state bank holding company members; eight states have approval authority over National bank members; and five states have approval authority over non-bank members.

The attached draft of a North Carolina Bank Holding Company Act would confer state regulation on the formation of North Carolina bank holding companies; the acquisition of North Carolina banks and non-bank subsidiaries; the merger of North Carolina bank holding companies; and the change of control

of North Carolina bank holding companies. The act would close the "non-bank bank" loophole in North Carolina and also prevent companies from owning industrial banks. The act contains adequate provisions to enforce regulation and supervision of bank holding companies and also provides for non-tax funding to defray the costs of such regulation and supervision.

DRAFT
FOR REVIEW ONLY

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR THE REGISTRATION AND EXAMINATION OF BANK
HOLDING COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 53 of the North Carolina General Statutes is amended by adding a new Article 18 to read as follows:

"ARTICLE 18

"Bank Holding Company Act of 1984.

"§ 53-225. Title and Scope.--(a) This Article shall be known and may be cited as the North Carolina Bank Holding Company Act of 1984.

(b) This Article provides for the registration and examination of bank holding companies in North Carolina. Nothing contained in this Article shall be deemed to apply to the registration, examination or supervision of banks or trust companies.

(c) Actions by the Commissioner under this Article shall not be subject to review by the State Banking Commission but shall be reviewable pursuant to G. S. 53-234.

§ 53-226. Definitions.--For the purposes of this Article:

(a) 'Bank' means any insured bank as the term is defined in Section 3(h) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(h), or any institution eligible to become an insured bank as the term is defined therein, which, in either event:

- (1) Accepts deposits that the depositor has a legal right to withdraw on demand; and
- (2) Engages in the business of making commercial loans.

(b) 'Bank holding company' means any company which has control over any bank..

(c) 'Commissioner' means the Commissioner of Banks of this State.

(d) 'Company' means a corporation, joint stock company, business trust, partnership, voting trust, association, and any similar organized group of persons, whether incorporated or not, and whether or not organized under the laws of this State or any other state or any territory or possession of the United States or under the laws of the foreign country, territory, colony or possession thereof, other than a corporation all the capital of which is owned by the United States or a corporation which is chartered by the Congress of the United States; 'company' includes subsidiary and parent companies;

(e) 'Control' means that:

- (1) Any company directly or indirectly or acting through one or more persons owns, controls, or has power to vote 25 percentum or more of the voting securities of the bank;
- (2) The company controls in any manner the election of a majority of the directors, managers or trustees of the bank or company; or
- (3) The Commissioner determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company..

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(f) 'Subsidiary', with respect to a bank holding company,
means:

- (1) Any company 25 percentum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is held by it with power to vote;
- (2) Any company the election of a majority of whose directors is controlled in any manner by a bank holding company; or
- (3) Any company with respect to the management or policies of which a bank holding company has the power, directly or indirectly, to exercise control, as determined by the Commissioner.

(g) For the purposes of any proceeding under subdivisions (e) (3) and (f) (3) of this section, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 percent of any class of voting securities of a given bank or company does not have control over that bank or company.

§ 53-227. Registration of Bank Holding Companies.--Not later than January 1, 1985, every bank holding company having control over a North Carolina federally or state-chartered bank or banks and every out-of-state bank holding company having control over a non-bank subsidiary or subsidiaries having offices located in this State shall register with the Commissioner on forms approved by the Commissioner.

§ 53-228. Periodic Reports.--The Commissioner may from time to time require reports under oath, in such scope and details as he

may reasonably determine, of a bank holding company and each non-bank subsidiary thereof subject to this Article, to keep him informed as to whether such companies are complying with the laws of this State.

§ 53-229. Examinations.--The Commissioner shall examine each bank holding company and each non-bank subsidiary thereof subject to this Article once during each three-year period the reasonable cost of which shall be assessed against and paid by the holding company. The Commissioner may use reports and examinations of federal and other regulatory agencies as a principal source of information for the examination prescribed by this section. The Commissioner may agree with such other regulatory agencies to have representatives of his office participate in examinations of bank holding companies subject to this Article.

§ 53-230. Cease and Desist.--Upon a finding that any action of a bank holding company or non-bank subsidiary subject to this Article is or may be detrimental to the safety and soundness of a North Carolina state or federally-chartered bank, the Commissioner, after a reasonable notice to the bank holding company or its non-bank subsidiary and an opportunity for it to be heard, shall have the authority to order it to cease and desist from such action. If the bank holding company or non-bank subsidiary fails to appeal such decision in accordance with G.S. 53-234 hereof and continues to engage in such action in violation of the Commissioner's order to cease and desist such action, it shall be subject to a penalty of one thousand dollars (\$1,000), to be recovered with costs by the Commissioner in any court of competent jurisdiction in a civil action prosecuted by the

Commissioner. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a bank holding company's or its non-bank subsidiary's failure to comply with an order of the Commissioner.

§ 53-231. Acquisitions of Certain Non-Bank Subsidiaries.--It shall be unlawful for any bank holding company or other company to acquire control of a non-bank subsidiary in this State which engages in the business of receiving deposits subject to check or other negotiable order of withdrawal or to repayment upon presentation of a passbook or other evidence of debt, or upon request of the depositor, or to repayment before, at, or after maturity upon presentation of a certificate of deposit or other evidence of debt. The provisions of this section shall not apply to a federal or state chartered savings and loan association.

§ 53-232. Rules.--Notwithstanding the provision of G.S. 53-95, the Commissioner may promulgate such reasonable rules as may be necessary to effectuate the purposes of this Article.

§ 53-233. Powers and Liabilities of Commissioner.--Nothing in this Article shall be deemed to limit any power otherwise granted to the Commissioner. The Commissioner shall not be subject to any civil liability or penalty nor to any criminal prosecution for any error in judgment or discretion in any action taken or omitted by him in good faith under the provisions of this Article.

§ 53-234. Appeal of Commissioner's Decision.--Notwithstanding any other provision of law, any aggrieved party may, within 30 days after final decision of the Commissioner and by written notice to the Commissioner, appeal directly to the North Carolina

Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days thereafter. Such record shall include all memoranda, briefs and any other documents, data, information or evidence submitted by any party to such proceeding except for material such as trade secrets normally not available through commercial publication for which such party has made a claim of confidentiality and requested exclusion from the record which the Commissioner deems confidential. All factual information contained in any report of examination or investigation submitted to or obtained by the Commissioner's staff shall also be made a part of the record unless deemed confidential by the Commissioner.

§ 53-235. Fees.--Each bank holding company subject to this act shall pay the following fees:

- (a) An initial registration fee of \$1,000.
- (b) An annual registration fee of \$750.
- (c) A fee of \$50.00 for the issuance of any certified copies of documents plus \$1.00 per page over a number of pages specified by the Commissioner.

Sec. 2. G.S. 7A-29 (a) is amended by inserting the words "the Commissioner of Banks pursuant to Article 18 of General Statutes Chapter 53," after the words "or decision of" and before the words "the North Carolina Utility Commission".

Sec. 3. This act is effective upon ratification.

DRAFT
FOR REVIEW ONLY

APPENDIX F

EXPLANATION OF THE NORTH CAROLINA
BANK HOLDING COMPANY ACT

The purpose of the proposed legislation is to provide for the registration and examination of bank holding companies in North Carolina.

The proposed legislation would add a new Article 18 to Chapter 53 of the North Carolina General Statutes.

Section-by-Section Analysis

Section 1

§53-225 - The title of this Article is the North Carolina Bank Holding Company Act of 1984 and applies only to bank holding companies.

§53-226 - Definitions - This section defines the important operative terms and words used in the act in a manner that makes the North Carolina Act consistent with the federal act.

§53-227 - This section requires all bank holding companies owning North Carolina banks and non-bank subsidiaries to register on or before January 1, 1985.

§53-228 - This section allows the Commissioner to require periodic reports from bank holding companies in order to keep him informed of compliance.

§53-229 - Requires the Commissioner to examine each bank holding company and each non-bank subsidiary at least once every 3 years. Many bank holding companies have no or few non-bank subsidiaries and for these, a three year cycle is sufficient.

The Commissioner is authorized to accept examinations and reports of federal and other supervisory agencies as a principal source of information for his examination.

§53-230 - Confers cease and desist authority on Commissioner and provides for monetary fines.

§53-231 - This section makes it unlawful for any bank holding company or any other company to own a bank as a non-bank subsidiary.

§53-232 - The Commissioner is given rule making authority where necessary to effectuate the purposes of the act.

§53-233 - This section makes it clear that the powers granted the Commissioner in this Article are not in derogation of other powers granted the Commissioner. The Commissioner is protected from civil or criminal liability for actions taken or omitted in good faith.

§53-234 - A final decision by the Commissioner under this Article is appealable directly to the North Carolina Court of Appeals.

§53-235 - This section sets fees for registration to be paid to the Commissioner's office.

Section 2. - Appeals to the Court of Appeals under this Article are added to the list shown in G.S. 7A-29(a).

Section 3. - The Article is effective upon ratification.

NORTH CAROLINA GENERAL ASSEMBLY
 LEGISLATIVE SERVICES OFFICE
 2129 STATE LEGISLATIVE BUILDING
 RALEIGH 27611



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March 29, 1984

MEMORANDUM

To: Committee on the Taxation and Regulation of Banks, Savings and Loan Associations and Credit Unions (Committee)

From: Terrence D. Sullivan, Director of Research

Re: Survey of Banks on Interstate Regional Reciprocal Banking Legislation

On March 15, 1984, the Committee instructed me to make a survey of all banks, both federally- and state-chartered, operating in this State on the issue of whether each bank favored the legislation, entitled "AN ACT TO PERMIT INTERSTATE BANKING IN NORTH CAROLINA ON A RECIPROCAL BASIS", recommended by Mr. John R. Jordan, Jr. representing the North Carolina Bankers' Association. The questionnaire was mailed on March 16, 1984.

As of March 29, 1984 of the 71 federally- and state-chartered banks operating in this State 34 banks or 47.9% have responded to the survey. Of all those responding, 23 banks or 67.6% are in favor of the proposed legislation, 10 or 29.4% were opposed (included in that figure is one bank that did not respond in a yes or no fashion but which expressed its fundamental opposition to "the principle of interstate banking"), and one bank indicated that it could not respond "intelligently" as it has not read the proposal.

Of the 23 banks favoring interstate regional reciprocal banking 9 were federally-chartered banks. All of the banks opposing the proposal were state-chartered institutions.

Selected unedited comments from those favoring the proposal follow:

"My answer is 'yes' to the above proposed legislation as an interim step to national interstate banking . . ."

"I do not want North Carolina isolated from the changes affecting other southeastern states relating to banking."

"While I personally would hope that reciprocal interstate banking does not become a reality within the next two years, it is obvious that interstate banking is a reality in many forms . . . Unless North Carolina acts soon on the matter our banks will be subject to losing their positions as leaders in the financial industry in the Southeast."

"Our support of this legislation is conditioned on no other legislation being attached to it."

"While we are not overly fond of the idea of interstate banking, we believe that it is an idea whose time has come and that it is inevitable. In order to allow North Carolina's larger banks to establish themselves as major southeastern banks prior to the time that the large money center banks are allowed to "gobble them up", we believe that interstate banking on a continuous state or southeast regional basis should be implemented as soon as possible. We do, however, urge the committee to take all possible steps to ensure that the reciprocity is in other southeastern states only and that the money center banks will be both directly and indirectly excluded."

"Lincoln Bank is a new small "Hometown Bank." Interstate Banking only helps the large statewide banks; however, for our state to remain a leader we must have Interstate Banking on a regional basis.

The Legislature must recognize the problem of the small independents on serving its Community. The Big problem is fulfilling loan request under \$1,000. In Lincolnton, North Carolina, one out of every three loan request are under \$2,000. these are credit worthy people. the cost of making these loans to the bank are greater than the interest earned. Example: It cost the bank approx. \$35.00 to make a loan.

* \$1,000.00 for 90 days at 16% (Present Ceiling) Interest Charge \$39.45

* \$500.00 in 12 installments at 16% Interest charge \$44.44

As you can see the banks can go broke doing what they should be doing.

Allow Banks on Loans less than \$2,000 to charge the same as finance companies. (All loans in South Carolina banks can charge what finance companies charge.)"

Selected unedited comments from banks opposed to the proposed legislation follow:

"I feel that Capital may leave the State should outside banks buy some of our state-wide banks."

"In our opinion North Carolina can support its own banking system without cross state mergers."

"Such reciprocation has no advantages whatsoever for a community bank, and conceivably could make banking more expensive for our customers. Large bank stockholders could be the only real beneficiaries of such legislation!"

A list of the banks responding and their individual positions is attached.

SURVEY OF BANKS
ON THE ISSUE OF INTERSTATE REGIONAL
RECIPROCAL BANKING

SUPPORTING	OPPOSING	NO POSITION
Bank of Candor	Avery County Bank	First Charlotte Bank
Bank of Montgomery	Bank of Bladenboro	
Branch Banking & Trust Co.	Bank of Four Oaks	
The Carolina Bank	Bank of Granite	
Central Carolina Bank and Trust	Bank of Pine Level	
Citizens Bank	Bank of Stanly	
Columbus National Bank	Merchants & Farmers Bank	
Community Bank of Carolina	Morris Plan Industrial Bank	
Concord National Bank	The Bank of Currituck	
County Bank & Trust Co.	The Fidelity Bank	
First National Bank of Randolph County		
First Union National Bank		
Lexington State Bank		
Lincoln Bank of NC		
NCNB National Bank of NC		
Northwestern Bank		
Planters National Bank and Trust Co.		
Triad Bank		
State Bank of Raleigh		
Union National Bank		
United Carolina Bank		
Wachovia Bank & Trust Co.		
(No Named Respondent)		

APPENDIX H

RECOMMENDED LEGISLATION

A BILL TO BE ENTITLED

AN ACT TO PERMIT INTERSTATE BANKING IN NORTH CAROLINA ON A
RECIPROCAL BASIS.

WHEREAS, banking organizations play a vital role in the
development and growth of a viable local and regional economy;
and

WHEREAS, it is anticipated that banking services in
North Carolina will be improved and competition enhanced by the
development in the southeastern region of the United States of
bank holding companies that are sufficient in size to compete
effectively with the largest banking organizations in the United
States in all areas of banking; and

WHEREAS, it is also anticipated that economic growth in
North Carolina will be stimulated and aided by the development of
such bank holding companies in the southeastern region of the
United States; and

WHEREAS, it is desirable, at the same time, to place
certain limitations on the development of bank holding companies
serving North Carolina in order to prevent undue concentrations
of economic resources and a lessening of competition as a result
thereof; and

WHEREAS, a number of the United States, including States
located in the southeastern region of the United States and

contiguous to North Carolina, have already authorized some form of interstate banking; and

WHEREAS, it is desirable to encourage other States located in the southeastern region of the United States to permit the acquisition of their banks and bank holding companies by bank holding companies principally located in North Carolina in order to further the development of bank holding companies in the southeastern region of the United States; and

WHEREAS, federal law permits each of the United States to determine the extent to which bank holding companies may engage in interstate banking within its borders; and

WHEREAS, it is in the best interest of North Carolina and its citizens to establish legislation to permit acquisition, on a reciprocal basis, of North Carolina banks and bank holding companies by bank holding companies principally located in other states in the southeastern region of the United States, subject to the supervision and regulation of the North Carolina Commissioner of Banks; NOW, THEREFORE,

Section 1. Chapter 53 of the General Statutes of North Carolina is amended to add a new Article as follows:

"ARTICLE 17

"North Carolina Regional Reciprocal Banking Act.

§ 53-209. Title. This Article shall be known and may be cited as the North Carolina Regional Reciprocal Banking Act.

§ 53-210. Definitions. Notwithstanding any other section of this Chapter, for the purposes of this Article:

(1) "Acquire" means:

- a. the merger or consolidation of one bank holding company with another bank holding company;
 - b. the acquisition by a bank holding company of direct or indirect ownership or control of voting shares of another bank holding company or a bank, if, after such acquisition, the bank holding company making the acquisition will directly or indirectly own or control more than 5 percent of any class of voting shares of the other bank holding company or the bank;
 - c. the direct or indirect acquisition by a bank holding company of all or substantially all of the assets of another bank holding company or of a bank; or
 - d. any other action that would result in direct or indirect control by a bank holding company of another bank holding company or a bank.
- (2) "Bank" means any "insured bank" as such term is defined in Section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or any institution eligible to become an "insured bank" as such term is defined therein, which, in either event,
- a. accepts deposits that the depositor has a legal right to withdraw on demand; and
 - b. engages in the business of making commercial loans.

- (3) "Banking office" means the principal office of a bank, any branch of a bank, any teller's window of a bank or any other office at which a bank accepts deposits: Provided, however, that "banking office" shall not mean:
- a. unmanned automatic teller machines, point of sale terminals or other similar unmanned electronic banking facilities at which deposits may be accepted;
 - b. offices located outside the United States; or
 - c. loan production offices, representative offices or other offices at which deposits are not accepted.
- (4) "Bank holding company" has the meaning set forth in section 2(a) (1) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. 1841 (a) (1)).
- (5) "Commissioner" means the Commissioner of Banks of this State.
- (6) "Control" has the meaning set forth in section 2(a) (2) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. 1841 (a) (2)).
- (7) "Deposits" means all demand, time, and savings deposits, without regard to the location of the depositor: Provided, however, that "deposits" shall not include any deposits by banks. For purposes of this Article, determination of deposits shall be made with reference to regulatory reports of condition or similar reports made by or to state and federal regulatory authorities.

- (8) "North Carolina bank" means a bank that:
- a. is organized under the laws of this State or of the United States; and
 - b. has banking offices located only in this State.
- (9) "North Carolina bank holding company" means a bank holding company
- a. that has its principal place of business in this State;
 - b. the North Carolina bank and regional bank subsidiaries of which hold more than 80 percent of the total deposits held by all of its bank subsidiaries, other than bank subsidiaries controlled by it in accordance with § 53-212 of this Article; and
 - c. that is not controlled by a bank holding company other than a North Carolina bank holding company.
- (10) "Principal place of business" of a bank holding company means the state in which the total deposits held by the banking offices of the bank holding company's bank subsidiaries are the largest.
- (11) "Region" means the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, and the District of Columbia.
- (12) "Regional bank" means a bank that

a. is organized under the laws of the United States or of one of the states in the region other than North Carolina; and

b. has banking offices located only in states within the region.

(13) "Regional bank holding company" means a bank holding company

a. that has its principal place of business in a state within the region other than North Carolina;

b. the regional bank and North Carolina bank subsidiaries of which hold more than 80 percent of the total deposits held by all of its bank subsidiaries, other than bank subsidiaries controlled by it in accordance with § 53-212 of this Article;

c. that is not controlled by a bank holding company other than a regional bank holding company; and

d. that neither is controlled by nor is a foreign bank as defined in the International Banking Act of 1978 (12 U.S.C. 3101(7)).

(14) "State" means any state of the United States or the District of Columbia.

(15) "Subsidiary" has the meaning set forth in section 2(d) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. 1841(d)).

§ 53-211. Acquisitions by Regional Bank Holding Companies.

(a) A regional bank holding company that does not have a North Carolina bank subsidiary (other than a North Carolina bank subsidiary that was acquired either pursuant to section 116 or section 123 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1730a(m), 1823(f) or in the regular course of securing or collecting a debt previously contracted in good faith, as provided in section 3(a) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. 1842(a))) may acquire a North Carolina bank holding company or a North Carolina bank with the approval of the Commissioner. The regional bank holding company shall submit to the Commissioner an application for approval of such acquisition, which application shall be approved only if:

(1) The Commissioner determines that the laws of the state in which the regional bank holding company making the acquisition has its principal place of business permit all North Carolina bank holding companies to acquire banks and bank holding companies in that state;

(2) The Commissioner determines that the laws of the state in which the regional bank holding company making the acquisition has its principal place of business permit such regional bank holding company to be acquired by the North Carolina bank holding company or North Carolina bank sought to be acquired. For the purposes of this subsection, a North Carolina bank shall be treated as if it were a North Carolina bank holding company;

(3) The Commissioner determines either that the North Carolina bank sought to be acquired has been in existence and continuously operating for more than five years or that all of the bank subsidiaries of the North Carolina bank holding company

sought to be acquired have been in existence and continuously operating for more than five years: Provided, that the Commissioner may approve the acquisition by a regional bank holding company of all or substantially all of the shares of a bank organized solely for the purpose of facilitating the acquisition of a bank that has been in existence and continuously operating as a bank for more than five years; and

(4) The Commissioner makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a North Carolina bank holding company of a bank or bank holding company in the state where the regional bank holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a bank or bank holding company in such state by a bank holding company all the bank subsidiaries of which are located in that state.

(b) A regional bank holding company that has a North Carolina bank subsidiary (other than a North Carolina bank subsidiary that was acquired either pursuant to section 116 or section 123 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1730a(m), 1823(f) or in the regular course of securing or collecting a debt previously contracted in good faith, as provided in section 3(a) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. 1842(a))) may acquire any North Carolina bank or North Carolina bank holding company with the approval of the Commissioner. The regional bank holding company shall submit to the Commissioner an application for approval of such acquisition, which application shall be approved only if:

(1) The Commissioner determines either that the North Carolina bank sought to be acquired has been in existence and continuously operating for more than five years or that all of the bank subsidiaries of the North Carolina bank holding company sought to be acquired have been in existence and continuously operating for more than five years: Provided, that the Commissioner may approve the acquisition by a regional bank holding company of all or substantially all of the shares of a bank organized solely for the purpose of facilitating the acquisition of a bank that has been in existence and continuously operating as a bank for more than five years; and

(2) The Commissioner makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a North Carolina bank holding company of a bank or bank holding company in the state where the regional bank holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a bank or bank holding company in such state by a bank holding company all the bank subsidiaries of which are located in that state.

(c) The Commissioner shall rule on any application submitted under this section not later than 90 days following the date of submission of a complete application. If the Commissioner fails to rule on the application within the requisite 90-day period, the failure to rule shall be deemed a final decision of the Commissioner approving the application.

§ 53-212. Exceptions. A North Carolina bank holding company, a North Carolina bank, a regional bank holding company, or a regional bank may acquire or control, and shall not cease to be a

North Carolina bank holding company, a North Carolina bank, a regional bank holding company, or a regional bank, as the case may be, by virtue of its acquisition or control of:

(1) a bank having banking offices in a state not within the region, if such bank has been acquired pursuant to the provisions of section 116 or section 123 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1730a(m), 1823(f));

(2) a bank having banking offices in a state not within the region, if such bank has been acquired in the regular course of securing or collecting a debt previously contracted in good faith, as provided in section 3(a) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. 1842(a)), and if the bank or bank holding company divests the securities or assets acquired within two years of the date of acquisition. A North Carolina bank, a North Carolina bank holding company, a regional bank holding company, or a regional bank may retain these interests for up to three additional periods of one year each if the Commissioner determines that the required divestiture would create undue financial difficulties for that bank or bank holding company; or

(3) a bank or corporation organized under the laws of the United States or of any state and operating under section 25 or section 25(a) of the Federal Reserve Act as amended (12 U.S.C. 601 or 611-31) or a bank or bank holding company organized under the laws of a foreign country that is principally engaged in business outside the United States and that either has no banking office in the United States or has banking offices in the United States that are engaged only in business activities permissible

for a corporation operating under section 25 or section 25(a) of the Federal Reserve Act as amended.

§ 53-213. Prohibitions.

(a) Except as expressly permitted by federal law, no bank holding company that is not either a North Carolina bank holding company or a regional bank holding company shall acquire a North Carolina bank holding company or a North Carolina bank.

(b) Except as required by federal law, a North Carolina bank holding company or a regional bank holding company that ceases to be a North Carolina bank holding company or a regional bank holding company shall as soon as practicable and, in all events, within one year after such event divest itself of control of all North Carolina bank holding companies and all North Carolina banks: Provided, however, that such divestiture shall not be required if the North Carolina bank holding company or the regional bank holding company ceases to be a North Carolina bank holding company or a regional bank holding company, as the case may be, because of an increase in the deposits held by bank subsidiaries not located within the region and if such increase is not the result of the acquisition of a bank or bank holding company.

§ 53-214. Applicable Laws, Rules and Regulations.

(a) Any North Carolina bank that is controlled by a bank holding company that is not a North Carolina bank holding company shall be subject to all laws of this State and all rules and regulations under such laws that are applicable to North Carolina banks that are controlled by North Carolina bank holding companies.

(b) Notwithstanding the provisions of G.S. 53-95, the Commissioner may promulgate rules, including the imposition of a reasonable application and administration fee, to implement and effectuate the provisions of this Article.

§ 53-215. Appeal of Commissioner's Decision. Notwithstanding any other provision of law, any aggrieved party in a proceeding under G.S. 53-211 or G.S. 53-212(2) may, within 30 days after final decision of the Commissioner and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days after filing of the appeal.

§ 53-216. Periodic Reports; Interstate Agreements.

The Commissioner may from time to time require reports under oath in such scope and detail as he may reasonably determine of each regional bank holding company subject to this Article for the purpose of assuring continuing compliance with the provisions of this Article.

The Commissioner may enter into cooperative agreements with other bank regulatory authorities for the periodic examination of any regional bank holding company that has a North Carolina bank subsidiary and may accept reports of examination and other records from such authorities in lieu of conducting its own examinations. The Commissioner may enter into joint actions with other bank regulatory authorities having concurrent jurisdiction over any regional bank holding company that has a North Carolina bank subsidiary or may take such actions independently to carry out its responsibilities under this Article and assure compliance

with the provisions of this Article and the applicable banking laws of this State.

§ 53-217. Enforcement. The Commissioner shall have the power to enforce the provisions of this Article, including the divestiture requirement of § 53-213(b), through an action in any court of this State or any other state or in any court of the United States, as provided in § 53-94 and § 53-134, for the purpose of obtaining an appropriate remedy for violation of any provision of this Article, including such criminal penalties as are contemplated by § 53-134.

Sec. 2. G.S. 7A-29 (a) is amended by inserting the words "the Commissioner of Banks pursuant to Article 17 of Chapter 53 of the General Statutes," after the words "the North Carolina Utilities Commission".

Sec. 3. Nonseverability. It is the purpose of this Article to facilitate orderly development of banking organizations that have banking offices in more than one state within the region. It is not the purpose of this Article to authorize acquisitions of North Carolina bank holding companies or North Carolina banks by bank holding companies that do not have their principal place of business in this State on any basis other than as expressly provided in this Article. Therefore, if any portion of this Article pertaining to the terms and conditions for and limitations upon acquisition of North Carolina bank holding companies and North Carolina banks by bank holding companies that do not have their principal place of business in this State is determined to be invalid for any reason by a final non-appealable order of any North Carolina or federal court of competent jurisdiction, then this entire Article shall be null

and void in its entirety and shall be of no further force or effect from the effective date of such order: Provided, however, that any transaction that has been lawfully consummated pursuant to this Article prior to a determination of invalidity shall be unaffected by such determination.

Sec. 4. This act shall become effective on January 1, 1985.

APPENDIX I

SECTION-BY-SECTION ANALYSIS OF A BILL TO BE ENTITLED

AN ACT TO PERMIT INTERSTATE BANKING IN NORTH CAROLINA ON A
RECIPROCAL BASIS

The purpose of this legislation is to establish a framework permitting interstate banking on a reciprocal basis among a defined region composed of southern states. The rationale is that by permitting expansion of commercial banking activities within the region, regionally oriented banking institutions will have an opportunity to develop within this natural geographic, cultural and economic region. The benefits to the regional economy of developing and maintaining institutions of a size sufficient to satisfy economic needs, yet maintaining a true regional focus in terms of activities would appear to be ample reason for establishing the regional framework contemplated by the draft.

The draft legislation effects a relaxation of the restrictions imposed by the Douglas Amendment to the federal Bank Holding Company Act (12 U.S.C. §1842(d)), in that it permits qualifying bank holding companies to engage in acquisitions or mergers involving banks or bank holding companies across state lines. The legislation does not, however, effect a relaxation of the McFadden Act; and consequently, interstate branching will

continue to be prohibited. Thus, in order to participate in the regional framework, a holding company structure is necessary.

From a legal point of view, this approach is viewed as desirable in that states may permissibly regulate the activities of bank holding companies, whereas their ability to regulate the activities of national banks is limited. By requiring a holding company framework, a state can monitor the entry of out-of-state institutions into their particular state.

Section by Section Analysis

Preliminary. Section 1 of the proposed legislation creates a new Article 17 to Chapter 53 of the General Statutes of North Carolina. This approach facilitates the use of some new definitions, as will be seen below, and is important in the terms of the non-severability provision found in § 53-215.

Definitions. The legislation sets forth a new series of definitions to be used solely with Article 17 as follows:

(1) "Acquire" is the term of art used to identify those transactions which trigger regulatory scrutiny. Modeled after the federal Bank Holding Company Act statutes regulating bank holding companies, this definitions subjects any type of transaction requiring state or federal bank regulatory approvals to the standards of this legislation. Mergers, stock or asset acquisitions or any other transaction creating a "control" relationship will fall within the parameters of this legislation. Conversely, actions that do not rise to the level of requiring regulatory applications do not bring the legislation into play. The less than 5 percent common stock acquisition and certain

investments in non-voting preferred stock or option arrangements not otherwise creating a control relationship will all continue to be permissible and will not be subject to the new legislation.

(2) "Bank" is defined in such a way as to cover only those institutions that are banks for the purposes of the federal Bank Holding Company Act. Under current law, a state lacks the power to deny entry to an institution that is not a bank under the federal Bank Holding Company Act. See B. T. Investment Advisors v. Lewis, 447 U.S. 27 (1980). One effect of this definition is to exclude savings and loan associations from the statute. The definition will also exclude industrial savings banks, trust banks, so called non-bank banks or any other institutions however chartered that do not both accept demand deposits and make commercial loans.

(3) The term "banking office" focuses on the use of a physical facility at which deposits are accepted. The definition does not reach ATMS, point of sale terminals, or exclusions other types of electronic or non-traditional "un-manned" deposit-gathering vehicles. The definition also excludes loan production or representative offices at which no deposits are accepted. Finally, the definition excludes foreign banking offices.

(4) "Bank holding company" is defined the same as in the federal Bank Holding Company Act.

(5) "Commissioner" is defined as the Commissioner of Banks of the State of North Carolina.

(6) "Control" is defined by adopting the definition set forth in the federal Bank Holding Company Act.

(7) "Deposits" are defined as all demand, time deposits and savings deposits without regard to the location of the depositor.

Excluded from the definition are inter-bank deposits. Since deposits are the key for determining the principal place of business of a bank holding company under the proposed legislation and establishing qualification as a Regional or North Carolina bank holding company, it is important to eliminate, as much as possible, the ability to shift deposits in order to qualify for participation in the regional framework or establish a receptive "home" state. Deposits of a bank are to be determined with reference to regulatory reports of condition, thereby facilitating calculation.

(8) A "North Carolina bank" is defined as a bank organized under the laws of North Carolina or of the United States that has banking offices only in North Carolina. Since interstate branching is not permissible, either under current law or under the framework contemplated by the draft legislation, the definition is adequate.

(9) A "North Carolina bank holding company" is defined as a Regional bank holding company having its principal place of business in this State. Principal place of business is determined primarily with respect to the deposits of the subsidiary banks of such holding company. Further, more than eighty percent of the deposits of the bank subsidiaries of the bank holding company must be located in the defined Region (except as otherwise authorized in Section 53-212), and the bank holding company must not itself be controlled by a bank holding company other than a North Carolina bank holding company. The principal place of business test assures that North Carolina will be the primary focus of banking activities; the "eighty percent"

test assures that the preponderance of all banking activities will be confined to the states in the Region.

(10) The "principal place of business" of a bank holding company is the state where a majority of its banking business is conducted. This is calculated by reference to the deposits held by the banking offices of the subsidiary banks of such holding company. The definition is essential in determining whether an institution is a North Carolina or a Regional bank holding company. It should be noted that the principal place of business of a bank holding company could change as a result of acquisitions or growth. Unlike the Douglas Amendment to the federal Bank Holding Company Act which focuses on the state where its banking subsidiaries were principally conducting operations on a fixed date, the definition set forth in this proposed legislation focuses on the current economic center of activities.

(11) The "Region" is defined in terms of a 13 state configuration plus the District of Columbia--specifically the area encompassed by the 5th and 6th Federal Reserve Districts, plus Arkansas and Kentucky. Within this defined region, there is such a degree of economic interdependence and activity and historic ties as to constitute an appropriate arena in which regional banking institutions should be permitted to develop.

(12) A "Regional bank" is defined as a bank, other than a North Carolina bank, organized under the laws of one of the states of the Region or the United States having banking offices only in the states of the Region. A bank having banking offices outside the Region disqualifies an institution as a Regional bank.

(13) The test for what constitutes a "Regional bank holding company" tracks the definition for a North Carolina bank holding company. First, the bank holding company must have its principal place of business in one of the states in the Region other than North Carolina. Second, more than eighty percent of the deposits of the bank subsidiaries of the bank holding company must be located in the defined Region, except as otherwise authorized in § 53-212. Third, the Regional bank holding company may not itself be controlled by a bank holding company that is not a Regional bank holding company. Finally, the bank holding company may not be controlled by nor itself be a foreign bank. As will be noted, the definitions of a North Carolina bank holding company and Regional bank holding company are mutually exclusive. Both definitions, however, require that the preponderance of all banking activities be conducted in the states of the Region.

(14) The term "State" is defined to mean any state of the United States or the District of Columbia.

(15) As with the terms "bank holding company" and "control", the term "subsidiary" is defined by adopting the definition of the equivalent term in the federal Bank Holding Company Act.

§ 53-211. Acquisitions by Regional Bank Holding Companies. This section sets forth the statutory framework that permits Regional bank holding companies to expand into North Carolina by acquiring North Carolina banks or North Carolina bank holding companies.

Subsection (a) authorizes the initial acquisition of a North Carolina bank or North Carolina bank holding company by a Regional bank holding company that does not have a North Carolina bank subsidiary upon the filing of an application with and

obtaining the approval of the Commissioner. There are four conditions that must exist before the Commissioner can approve such an acquisition:

(1) The laws of the state where the Regional bank holding company has its principal place of business must generally permit all North Carolina bank holding companies to acquire banks and bank holding companies in that state. This requirement establishes a basic statutory reciprocity test of general relevance in terms of the ability of all North Carolina bank holding companies to make acquisitions in the Regional bank holding company's principal state.

(2) The North Carolina bank¹ or North Carolina bank holding company sought to be acquired in the proposed transaction must be legally able to acquire the Regional bank holding company seeking to acquire it under the laws of the state where the Regional bank holding company has its principal place of business. This is a specific transactional reciprocity test, sometimes referred to as a "mirror image" test. The purpose of this reciprocity requirement is to assure that any target institution has a comparable opportunity to make acquisitions in the state where the acquiring bank holding company has its principal place of business.

¹ Since a bank cannot legally acquire a bank or bank holding company in another state, the bill specifies that the North Carolina target banks is deemed to be a North Carolina bank holding company for the purposes of this test.

For example, assume that South Carolina enacts a statute that allows interstate acquisitions of banks and bank holding companies and assume further that South Carolina's banking laws prohibit acquisitions of South Carolina banks or bank holding companies having less than \$2 billion in assets. Under this transactional reciprocity test, no bank holding company with assets of less than \$2 billion having its principal place of business in South Carolina could acquire a North Carolina bank or North Carolina bank holding company, because the target North Carolina bank holding company or North Carolina bank (which for the purposes of this test is deemed to be a North Carolina bank holding company) could not acquire the South Carolina bank holding company under South Carolina law.

(3) The third requirement for initial acquisitions of North Carolina banks and North Carolina bank holding companies by Regional bank holding companies is that each North Carolina bank to be directly or indirectly acquired in the proposed transaction must have been in existence for more than five years. An exception is made for a "phantom bank" that is formed for the sole purpose of acquiring a North Carolina bank that meets the five year test.

This requirement prevents an out-of-state bank holding company from obtaining a de novo bank charter in this state or from acquiring a newly chartered bank. This provision is designed to allay the concern that out-of-state bank holding companies would use de novo entry as a technique to drive existing banks out of business.

(4) Any legal requirements that apply only to interstate as opposed to intrastate acquisitions of banks and bank holding

companies imposed by the laws of the state where the Regional bank holding company has its principal place of business will be imposed on the applicant as a prerequisite for approval of a proposed North Carolina transaction. For example, assume Florida enacts an interstate bank holding company statute which requires that only Florida banks that have been in existence for 10 years may be acquired by a bank holding company having its principal place of business in a State other than Florida and assume further that no similar restriction applies to intrastate acquisitions of banks in Florida. Under this fourth requirement, a bank holding company with its principal place of business in Florida could not acquire a North Carolina bank that was not at least 10 years old or acquire a North Carolina bank holding company unless all of its bank subsidiaries were at least 10 years old.

The principal purpose of this test is to discourage a state from enacting discriminatory requirements that only apply to interstate acquisitions. All such requirements automatically apply to bank holding companies having their principal place of business in that state when they attempt to make acquisitions in other states within the Region that have legislation similar to this statute.

This requirement only applies, however, to discriminatory restrictions. Therefore, if in the above example, Florida banking laws also imposed the 10 year requirement on all intrastate bank and bank holding company acquisitions, the 10 year rule would not be applied to a proposed acquisition of a North Carolina bank or North Carolina bank holding company by a

bank holding company having its principal place of business in Florida.

Two additional aspects of acquisitions by regional bank holding companies under subsection (a) of § 53-211 need to be highlighted:

(1) In drafting the reciprocity tests, one item of extreme importance was considered to be the definition of the number of states with which reciprocity must exist before a Regional bank holding company could enter a state. If reciprocity were required with respect to every state where the entering bank holding company had banking subsidiaries, application of the statute would become so complex that regional holding companies would be unable to grow. A minor presence in a non-reciprocal state would frustrate entry, and although it may be appropriate to encourage reciprocity in as many states as possible, the practical problems associated with such a restrictive test would be tremendous.

On the other hand, with a principal place of business reciprocity standard, North Carolina is assured that whenever an out-of-state institution makes its initial acquisition in this state, North Carolina institutions will be permitted to go into the state where the out-of-state institution principally conducts its banking activities. There can be no "back-door" entry, as might be permissible under a lesser test. In addition, the formulation chosen creates a framework that will both encourage states to enact reciprocal legislation and permit the growth of regional holding companies.

(2) Any approval obtained under subsection (a) is limited to the particular transaction in question. The establishment of any

new branches in North Carolina by the bank subsidiaries of the acquiring bank holding company would be subject to the identical requirements imposed on approval of new branches of state and national banks having all their banking offices in North Carolina.

Subsection (b) requires that a regional bank holding company that already has a North Carolina bank subsidiary obtain the approval of the North Carolina Commissioner of Banks for any additional acquisitions of North Carolina banks or bank holding companies. The Commissioner is required to give his approval for such acquisitions if the two conditions that appear in paragraphs (3) and (4) of subsection (a) are met--that is, if each North Carolina bank to be acquired, either directly or indirectly, has been in existence more than five years (again except in the case of "phantom banks" formed solely for the purpose of acquiring North Carolina banks that meet the five-year test), and if the acquisition is made subject to any legal requirements or restrictions that apply only to interstate--as opposed to intrastate--acquisitions of banks and bank holding companies under the laws of the state where the regional bank holding company has its principal place of business. It is felt that these two requirements are appropriately continued for each North Carolina bank or bank holding company acquisition by a regional bank holding company. On the other hand, it is felt that once a regional bank holding company has passed the basic reciprocity tests set forth in paragraphs (1) and (2) of subsection (a) and has actually entered North Carolina by acquisition, future North Carolina acquisitions by the holding company ought not be constrained by paragraphs (1) and (2).

Under subsection (c), the Commissioner must rule on an application within 90 days of its submission.

§ 53-212. Exceptions. This section sets forth three circumstances where a bank or bank holding company might have banking subsidiaries outside the Region but still be permitted to participate in interstate expansion within the Region. The first permits emergency acquisitions of failing banks or thrift institutions under the provisions of the Garn-St Germain Depository Institutions Deregulation Act. The interstate acquisition of a failing institution should not disqualify a bank holding company from participating within the Region. Thus, nothing in the proposed legislation is intended to frustrate or interfere in any way with the operation of the Garn-St Germain Act's failing bank provision.

Second, a bank or bank holding company may retain for a limited period of time interests in banks outside the Region obtained by virtue of the "debt previously contracted" exemption to the federal Bank Holding Company Act.

Finally, "Edge Act" banks and international banking activities are not restricted by the definitions. It should be noted, however, that state-chartered banks may have to satisfy some prior approval requirements under state banking codes in order to establish international branches or subsidiaries.

In addition, the 80%-20% deposit test also creates a "de minimis" exception to the regional approach by allowing a degree of non-regional banking activities. So long as following the acquisition more than eighty percent of the banking deposits of the bank subsidiaries of the holding company and the principal place of business of the holding company are both located in the

Region, a non-regional institution may be acquired. Acquisitions made pursuant to Section 53-212 are excluded from the 80%-20% deposit test. See subsections (9) and (13) of § 53-210 (definition of North Carolina bank holding company and Regional bank holding company).

This "de minimis" exception is of special importance for institutions located in states along the border of the Region. It allows a degree of expansion into their local market areas, yet does not disqualify them as acquirors in North Carolina.

In this connection, assuming an out-of-region acquisition under the "de minimis" exception, the fact that at some future point in time the out-of-region deposits exceed the 20% maximum will not affect the validity of any prior acquisition made by the bank holding company in question. The holding company would, however, be disqualified from making any further acquisitions in or outside the Region (other than those permissible under Section 53-212 until it could meet the 80%-20% deposit test). The most obvious way to cure this problem would be to divest one or more out-of-region banks.

§ 53-213. Prohibitions. Subsection (a) of this section provides that, except as expressly permitted by federal law, no bank holding company other than a North Carolina bank holding company or a Regional bank holding company may permissibly acquire a North Carolina bank or a North Carolina bank holding company. The "except as permitted by federal law" allows for the Garn-St Germain acquisition of failed institutions. It does not amount to an authorization under the Douglas Amendment to have nationwide interstate banking of North Carolina.

Under subsection (b), a North Carolina bank holding company or a Regional bank holding company or a Regional bank holding company must divest itself of control of all North Carolina banks or bank holding companies within one year. However, no divestiture is required if the North Carolina bank holding company or Regional bank holding company ceases to be such because of an increase in deposits not a result of an acquisition.

§ 53-214. Applicable Laws Rules and Regulations. This section makes it clear that any North Carolina bank or bank holding company that is controlled by an out-of-state bank holding company is subject to all of the laws of this state and all rules and regulations under such laws that are applicable to North Carolina banks that are controlled by North Carolina bank holding companies.

The section grants authority to the Commissioner to adopt rules, including those establishing certain fees.

§ 53-215. Appeal of the Commissioner's. This section grants appeal from the Commissioner's decision directly to the Court of Appeals.

§ 53-216. Periodic Reports and Interstate Agreements. This section allows the Commissioner to require reports of bank holding companies to assure compliance with the Article and to enter into agreements with other states' regulators to assure that compliance.

§ 53-217. Enforcement. This section gives the North Carolina Commissioner of Banks power to enforce the provisions of the statute--including the divestiture requirement that applies in the event that an out-of-region acquisition results in a holding

company no longer qualifying as a regional bank holding company-- through actions provided for in § 53-94 and § 53-134 of the General Statutes of North Carolina, including actions seeking criminal penalties as provided in § 53-134.

Sec. 2. This section makes a conform change to General Statutes Chapter 7A to permit appeals from the Commissioner's decision under this Act directly to the Court of Appeals.

Sec. 3. This section basically states that if any essential part of the North Carolina regional interstate legislation is declared unconstitutional, the entire legislation will be deemed invalid. The essential provisions include the regional framework, the approval power of the Commissioner and the reciprocity requirements that must exist before an out-of-state institution may enter North Carolina. The severability provision is included to prohibit unanticipated distortions of the interstate framework if any of the essential provisions in the proposed legislation is declared unconstitutional. Any acquisitions made prior to the finding of unconstitutionality would be unaffected and in effect would be "grandfathered" on a permanent basis.

Sec. 4. This act is effective on January 1, 1985.

APPENDIX J

RECOMMENDED LEGISLATION

AN ACT TO PERMIT THE CHARGING OF LATE FEES ON LOANS NOT SECURED BY MORTGAGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-10 is amended by adding a new subsection (h) to read as follows:

"(h) Any lender may charge a party to a loan, other than those loans referred to in subsections (e) and (f) of this section, a late payment charge on any installment more than 10 days past due in an amount not to exceed five percent (5%) of such installment. Such late payment charge may be imposed only if provided for in the loan agreement and only one late payment charge may be imposed with respect to a single installment. If a late payment charge is deducted from a payment on the loan, such deduction shall not be deemed to make any subsequent payment insufficient and thereby justify the charging of an additional late charge. Once a borrower has incurred a late payment charge, no charge shall be incurred for a subsequent payment which would have been timely and sufficient but for application of the previous late payment charge."

Sec. 2. This act is effective upon ratification.

